

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K04-S-78**

BILLY JOE AND EVA MARSHALL

APPELLANTS

V.

ORDER NO. K-19362

**MAGOFFIN COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals has delegated authority to the hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on January 6, 2005 and made the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property located at KY Route 30, Salyersville, Kentucky. The Magoffin County Property Valuation Administrator assessed the property at \$60,000.00. The taxpayer or Appellant values the property at \$15,000.00. The Magoffin County Board of Assessment Appeals valued the property at \$45,000.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellant offered the following evidence in support of Appellant's appeal: Billy Joe Marshall appeared as the sole witness for the Appellant and provided sworn testimony in support of an assessment in the amount of \$15,000.00.

The Appellant inherited the property in 1978 by virtue of will and the assessment of the property at that time was \$5,000.00. Located on the 2.5 acres is a 1-1/2 story frame home consisting of four (4) bedrooms and 990 square feet of living space. The PVA argues that the comparable sales in Magoffin County support the \$45,000.00 assessment made by the local board of appeals. Mr. Marshall offered no comparable sales in his defense, but stated the residence was insured for \$15,000.00 and thought the assessment was a discrimination issue. Mr. Marshall also stated that he recently found out the residence does not have a heating system or sewer system even though he visits the tenants on a yearly basis and delivered Christmas gifts. In Mr. Marshall's testimony he stated the tenants had been living in the residence for 5 or 6 years and the income from rent was \$1,800.00 yearly.

Dexter Allen with the Magoffin County PVA office provided testimony assisted by Don McFarland, the Magoffin County Attorney. Mr. Allen testified the valuation was based on 6 comparable sales that consisted of a residence and ½ to 5 acres of land. Mr. Allen also presented 5 comparable sales that consisted of lots only. The sales on the 6 parcels ranged from \$30,000.00 to \$65,000.00 and were a distance of 15 to 20 miles from Mr. Marshall's property.

It is the finding of this hearing that the Appellant did not sustain his burden of proof regarding his challenge to the final order of the Magoffin County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of the hearing officer, Randall Phillips, that the fair cash value of the property in question as of January 1, 2004 is \$39,500.00.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Magoffin County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Magoffin County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Magoffin County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officer concludes that the fair cash value of the subject property as of January 1, 2004 is \$39,500.00.

RECOMMENDED ORDER

It is recommended that the July 15, 2004 final ruling of the Magoffin County Board of Assessment Appeals be reversed and the real property be assessed at a fair cash value of \$39,500.00 as of January 1, 2004.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The July 15, 2004 final ruling of the Magoffin County Board of Assessment Appeals is reversed and the real property is to be assessed at a fair cash value of \$39,500.00 as of January 1, 2004.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: June 24, 2005**

FULL BOARD CONCURRING

**NANCY MITCHELL
CHAIR**